



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0493; FRL-10005-65-Region 9]

Air Plan Conditional Approval; Arizona; Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to conditionally approve revisions to the Maricopa County Air Quality Department (MCAQD or the County) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from organic liquid and gasoline storage and transfer operations. We are conditionally approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act). We are also conditionally approving the County's Reasonably Available Control Technology (RACT) demonstration for the source categories associated with these rules.

DATES: This rule will be effective on [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0493. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Rebecca Newhouse, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3004 or by email at newhouse.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On September 23, 2019 (84 FR 49699), the EPA proposed to conditionally approve the following rules into the Arizona SIP.

Local Agency	Document	Revised	Submitted
MCAQD	Rule 350: Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility	11/02/2016	06/22/2017

Local Agency	Document	Revised	Submitted
MCAQD	Rule 351: Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals	11/02/2016	06/22/2017
MCAQD	Rule 352: Gasoline Cargo Tank Testing and Use	11/02/2016	06/22/2017
MCAQD	Rule 353: Storage and Loading of Gasoline at Gasoline Dispensing Facilities	11/02/2016	06/22/2017

We proposed to conditionally approve these rules pursuant to CAA section 110(k)(4) because, although rule deficiencies preclude full SIP approval pursuant to section 110(k)(3), the rules largely comply with the relevant CAA requirements, and because the MCAQD and the Arizona Department of Environmental Quality (ADEQ) have committed to provide the EPA with a SIP submission within one year of this final action that will include specific rule revisions that would adequately address the deficiencies.¹ We also proposed to conditionally approve MCAQD's RACT demonstrations for the 2008 8-hr ozone National Ambient Air Quality Standards (NAAQS) with respect to the VOC source categories covered by Rules 350, 351, 352, and 353. Our proposed action contains more information on the rules, deficiencies, MCAQD and ADEQ commitments, and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this

¹ Letter dated January 28, 2019, from Philip A. McNeely, Director, MCAQD, to Misael Cabrera, Director, ADEQ, and letter dated February 25, 2019, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Michael Stoker, Regional Administrator, EPA, Region IX.

period, we received two comments. One member of the public expressed support for our proposed action, stating that “[t]he EPA should approve the revisions contingent on Arizona’s submission of further revisions to account for the deficiencies of its SIP.”

The second commenter stated that Maricopa County struggles to meet its air quality standards, and described health and welfare impacts of the area’s air quality. The commenter wrote that, “I believe it is due time that Maricopa County enforce and meet the regulatory standards mandated by the EPA,” and that the County’s feet should be “held to the fire” because existing air quality actions have not been sufficient. Accordingly, the commenter does not support the EPA’s proposal to conditionally approve the SIP revisions. The commenter acknowledged that the changes detailed in the commitment letters allow for RACT to be satisfied, but wrote that the proposed action would set a precedent for changing the regulations without changing the practices that jeopardize young people’s health. The commenter cautioned against allowing Maricopa County to satisfy RACT without “demonstrated action.”

The EPA understands the commenter’s concerns about the impacts of air quality in Maricopa County. The commenter does not appear to contest that the rules at issue would meet the RACT standard once the County’s commitments are fulfilled. Instead the EPA understands the commenter’s concern to be with the proposed conditional approval. Section 110(k)(4) of the Act allows the Administrator to conditionally approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. The EPA believes that Maricopa County and ADEQ have made the necessary commitments to rectify the deficiencies within the statutory timeframe. The commenter does not contest this. Therefore, the EPA does not understand the

commenter to have stated that the Administrator is prohibited from conditionally approving Maricopa County's submission; they have instead asked the EPA to exercise its discretion to respond to the submission in a different manner. The EPA believes that a conditional approval is the most appropriate action for the County's submittal. By conditionally approving the rules, the EPA is able to add the rules to the SIP without waiting for additional revisions. Because the rules as-submitted, despite their deficiencies, would strengthen the SIP, the EPA believes that it is appropriate to add the rules to the SIP now so that the air quality in the area can benefit from the stronger rules while additional revisions are made. If the County were to fail to meet its commitment to correct the identified deficiencies, the conditional approval would be treated as a disapproval, starting a sanctions clock under section 179(b), and a Federal Implementation Plan clock under section 110(c)(1).

Because the commenter does not suggest that the County has not met the statutory requirements for a conditional approval, and a conditional approval would allow the SIP-strengthening provisions in the submittal to go into effect quickly, the EPA is finalizing the conditional approval as proposed.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(4) of the Act, the EPA is conditionally approving into the Arizona SIP, Rules 350, 351, 352, and 353, and MCAQD's RACT demonstrations for the 2008 8-hr ozone NAAQS with respect to the following six Control Techniques Guidelines (CTGs), as described in our proposal: Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA-450/2-77-036);

Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047); Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026); Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA-450/2-77-035); Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA-450/2-78-051); and Design Criteria for Stage I Vapor Control Systems – Gasoline Service Stations (EPA-450/R-75-102). If the MCAQD and the ADEQ submit the required rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiencies will be cured. However, if MCAQD, through the ADEQ, fails to submit these revisions within the required timeframe, the conditional approval will be treated as a disapproval for those rules for which the revisions are not submitted (and the associated RACT SIP CTG source categories).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQD rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.² The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in

² 62 FR 27968 (May 22, 1997).

the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because SIP approvals, including conditional approvals, are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because the conditional approvals will not in-and-of themselves create any new information collection burdens, but will simply conditionally approve certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because the conditional approvals will not in-and-of themselves create any new regulations, but will simply

conditionally approve certain State requirements for inclusion in the SIP.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for

the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 24, 2020.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D – Arizona

2. Section 52.119 is amended by adding paragraph (c) to read as follows:

§52.119 Identification of plan - conditional approvals.

* * * * *

(c) A plan revision for the Maricopa County Air Quality Department (MCAQD) submitted June 22, 2017, by the Arizona Department of Environmental Quality (ADEQ), the Governor's designee, providing MCAQD's Reasonably Available Control Technology (RACT) demonstration for the 2008 8-hour ozone National Ambient Air Quality Standards, and rule submissions in satisfaction thereof.

(1) The conditional approval is based upon the February 25, 2019 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies.

MCAQD commits to submit these rules to the ADEQ within eleven (11) months after the EPA's conditional approval, and ADEQ commits to make the final submission to the EPA not later than twelve (12) months after the EPA's approval. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules and CTG categories for which the corrections are not made. The following MCAQD rules and additional materials are conditionally approved:

(i) Rule 350, *Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility*;

(ii) Rule 351, *Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals*;

(iii) Rule 352, *Gasoline Cargo Tank Testing and Use*;

(iv) Rule 353, *Storage and Loading of Gasoline at Gasoline Dispensing Facilities*; and

(v) The RACT demonstration titled “Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP),” Only those portions of the document beginning with “Gasoline Bulk Plants, Fixed Roof Petroleum Tanks, External Floating Roof Petroleum Tanks, And Gasoline Loading Terminals” on page 33 through the first full paragraph on page 35, and Appendix C: CTG RACT Spreadsheet, the rows beginning with “Gasoline Bulk Plants” on page 60, through “Service Stations – Stage I” on pages 67-69. This demonstration represents the RACT requirement for the following source categories: Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA-450/2-77-036), Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047); Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026); Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA-450/2-77-035); Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA-

450/2-78-051); and Design Criteria for Stage I Vapor Control Systems – Gasoline Service Stations (EPA-450/R-75-102).

(2) [Reserved]

3. Amend §52.120 as follows:

a. In paragraph (c), Table 4, under the table headings “Post-July 1988 Rule Codification” and “Regulation III – Control of Air Contaminants,” by revising the entries for “Rule 350,” “Rule 351,” “Rule 352,” and “Rule 353.”

b. In paragraph (e), Table 1, under the subheading “Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas,” by adding an entry for “Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)” after the entry for “Maricopa Association of Governments (MAG) 1987 Carbon Monoxide (CO) Plan for the Maricopa County Area, MAG CO Plan Commitments for Implementation, and Appendix A through E, Exhibit 4, Exhibit D.”

The revisions and addition read as follows:

§52.120 Identification of plan.

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(c)	*	*	*	

Table 4—EPA-Approved Maricopa County Air Pollution Control Regulations

County	Title/subject	State	EPA approval	Additional explanation
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citation		effective date	date	

Post-July 1988 Rule Codification				

Regulation III – Control of Air Contaminants				

Rule 350	Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017
Rule 351	Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017
Rule 352	Gasoline Cargo Tank Testing and Use	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017
Rule 353	Storage and Loading of Gasoline at Gasoline Dispensing Facilities	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017

(e) * * *

Table 1 – EPA-Approved Non-Regulatory and Quasi-Regulatory Measures

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively]¹

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
The State of Arizona Air Pollution Control Implementation Plan				
*	*	*	*	*
Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas				
*	*	*	*	*
Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)	Maricopa County portion of Phoenix-Mesa nonattainment area for 2008 8-hour ozone NAAQS	June 22, 2017	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Only those portions of the document beginning with “Gasoline Bulk Plants, Fixed Roof Petroleum Tanks, External Floating Roof Petroleum Tanks, And Gasoline Loading Terminals” on page 33 through the first full paragraph on page 35, and Appendix C: CTG RACT Spreadsheet, the rows beginning with “Gasoline Bulk Plants” on page 60, through “Service Stations – Stage I” on pages 67-69.
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¹ Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

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[FR Doc. 2020-03247 Filed: 2/25/2020 8:45 am; Publication Date: 2/26/2020]